



PATENT  
454311-2231.1

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

Applicant(s) : Shi *et al.*  
U.S. Serial No. : 10/706,892  
Filing Date : November 13, 2003  
For : SCREENING FOR WEST NILE VIRUS  
ANTIVIRAL THERAPY  
Examine : M Franco G Salvoza  
Art Unit : 1648

745 Fifth Avenue  
New York, NY 10151

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**DECLARATION UNDER 37 C.F.R. § 1.132**

Sir:

WE, PEI-YONG SHI, MICHAEL LO, AND MARK TILGNER, DECLARE AND STATE THAT:

1. We are the co-inventors of the subject matter described and claimed in the present patent application.
2. An article entitled, "Infectious cDNA Clone of the Epidemic West Nile Virus from New York City" published in the Journal of Virology, Vol. 76, No. 12, June 2002, p. 5847-5856, (hereinafter "Shi *et al.*"), names five authors: Pei-Yong Shi, Mark Tilgner, Michael K. Lo, Kim A. Kent, and Kristen A. Bernard. As stated above, the co-inventors of the subject matter described and claimed in the present invention are Pei-Yong Shi, Mark Tilgner, Michael K. Lo. Thus, the authors of Shi are not "others" as defined by 35 U.S.C. § 102(a) as to the inventive entity of this application, as the inventors are named authors of Shi *et al.*

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Declaration under 37 USC 1

3. As is known in the scientific community, persons are or are not included as authors on scientific articles for reasons that do not involve inventorship. Any work reported in Shi et al., particularly work that may be common to the present application, was performed by or under the direction, supervision or control of the inventors Pei-Yong Shi, Mark Tilgner, Michael K. Lo on the present application. Co-authors Kim A. Kent, and Kristen A. Bernard did not make an independent inventive contribution to the invention claimed in this application.

4. Thus, we are advised and therefore believe that since the authors of Shi et al. are not "others" as to the present inventive entity, this document is not available as a reference against the present patent application. We thus respectfully request that rejections based on this document be reconsidered and withdrawn.

5. We further declare that all statements made herein of our own knowledge are true and that all statements made on information and belief are believed to be true; and, that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine, or imprisonment, or both, under Section 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of the present application or any patent issued thereon.

Date: Aug 30 2006

Pei-Yong Shi  
PEI-YONG SHI

Date: \_\_\_\_\_

\_\_\_\_\_  
MICHAEL LO

Date: Aug 31 2006

Mark Tilgner  
MARK TILGNER

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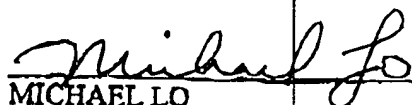
3. As is known in the scientific community, persons are or are not included as authors on scientific articles for reasons that do not involve inventorship. Any work reported in Shi et al., particularly work that may be common to the present application, was performed by or under the direction, supervision or control of the inventors Pei-Yong Shi, Mark Tilgner, Michael K. Lo on the present application. Co-authors Kim A. Kent, and Kristen A. Bernard did not make an independent inventive contribution to the invention claimed in this application.

4. Thus, we are advised and therefore believe that since the authors of Shi et al. are not "others" as to the present inventive entity, this document is not available as a reference against the present patent application. We thus respectfully request that rejections based on this document be reconsidered and withdrawn.

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Date: \_\_\_\_\_

PEI-YONG SHI

Date: 8/31/06  
MICHAEL LO

Date: \_\_\_\_\_

MARK TILGNER

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Declaration under 37 USC 1